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09/924,831	08/08/2001	David Vozick	65252	2876
7590	11/04/2003			EXAMINER
Norman H. Zivin Cooper & Dunham LLP 1185 Avenue of the Americas New York, NY 10036			CHAWAN, VIJAY B	
			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 16

Application Number: 09/924,831

Filing Date: August 08, 2001

Appellant(s): VOZICK ET AL.

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Zivin  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/11/03.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that independent claims 1, 15 and 17 and the depending claims stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

6,047,257 Dewaele 4-2000

## **(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

## ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewaele (6,047,257).

As per claim 1, Dewaele teaches an apparatus for hands-free command and control of a dental imaging system having a display monitor, a microphone and storage device storing a plurality of dental images corresponding to a selected dental patient, comprising:

a speech recognition unit which converts to electronic speech data a voice command received through the microphone to select one of the plurality of images for viewing (Fig.1, items 4, 6, 8 and 7, Col.5, lines 1-65, Col.7, lines 45-55); and,

a command and control processor for the electronic speech data received from said speech recognition unit, wherein said command and control processor causes the selected image to be retrieved and displayed on the display monitor (Col.9, line 39 – Col.10, line 65).

Dewaele while teaching displaying medical images in the field of Radiology, so that the attending physician can make his or her diagnosis and transcribed in response to voice commands recognized by the speech recognizer, do not specifically teach in the field of dentistry. It would have been obvious to one with ordinary skill in the art at the time of invention to implement the method and apparatus as taught by Dewaele in the medical field to the field of dentistry because, one would readily realize that by using speech recognition to display plurality of dental images would provide the hands free environment to the user and also have the data needed.

As per claims 2-5, Dewaele teaches the method of claim 1, further comprising manipulation of images corresponding to a patient (Fig.1, items 4, 6, 8 and 7, Col.5, line 1- Col.6, line 6, Col.7, lines 19-55, Col.9, line 39 – Col.10, line 65).

As per claims 6-9, Dewaele teaches storage device connected to a computer network located on either a standalone and/or mobile (accessible remotely) (Col.3, lines 54-61), Data input through a microphone (Fig.1, item 5).

As per claims 10-14, Dewaele teaches an identification read/write sub-unit to manipulate the radiographic images by enabling a user to retrieve the required data from the patient database using speech recognition during both stationary and mobile operation (First embodiment and the Second embodiment of the Detailed description)

Claims 15-16 are similar in scope and content of claim 1, and are rejected under similar rationale.

Claims 17-18 are method claims to be implemented on the apparatus claimed in claims 15-16, and are similar in scope and content, and are rejected under similar rationale.

***(11) Response to Argument***

Applicants argue on page 13 of the Appeal Brief that "Since one of ordinary skill in the art is told by the Dewaele reference that the cassette is transported to another location (and thus the identification data entry process does not occur during a medical procedure), the skilled person would not understand the Dewaele reference as relating to control of the risk of infection."

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., "... process does not occur during a medical procedure") is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants' argue that "Dewaele'257 does not disclose or suggest, however, retrieval for display of a computer stored dental (or medical) image based on a voice command to retrieve the image which is detected through speech recognition". Examiner disagrees. Dewaele does retrieve and use images stored in diagnosing or analyzing patient data (Col.5, line 44 – Col.6, line 6), and transcribing it. Dewaele identifies medical images through speech recognition by accessing them when needed from a storage database, identifiable using the patient's particulars.

In response to applicant's argument that Dewaele '257 does not suggest that hands-free operation implemented through speech recognition minimizes the risks of contamination, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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It would have been obvious to one with ordinary skill at the time of invention that the use of speech recognition to access patient data, or in the instant application, dental images in the form of data clearly shows the advantage of hands-free operation, whether for minimizing the risks of contamination or to facilitate the use of both hands to be free to do whatever the user wants to do with the hands, either by a dentist or a radiology technician or a physician. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Vijay B. Chawan

Primary Examiner

Art Unit 2654

vbc

November 2, 2003

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